

Remarks

Further consideration of this application is respectfully requested. Claims 19-21, 24, 26, 27, 34, 36 and 37 are presented for further examination.

This Amendment is submitted in response to the Non-Final Rejection dated August 11, 2005. In that action, the Examiner rejected claims 19-21, 24, 26, 27, 34 and 36 under 35 U.S.C. § 103(a) as unpatentable over “FairMarket” in view of “Doyle”.

FairMarket discloses an online auction in which vendors, “normally OEMs, and distributors, anomalously list excessive inventory for sale.” Buyers can bid on the listed inventory, and the highest bidder wins at the end of the daily auction. FairMarket “charges a nominal fee for sellers for the use of the service.” FairMarket eliminates the middleman such as brokers in selling excess inventory. The FairMarket “online auctions eliminate the middleman, who normally has a stake in the product sold....” “Informed sellers may get better deals than from brokers because they buy in large quantities and do not pay fees to middlemen.”

The FairMarket reference is similar to Odom et al. which was previously cited showing an auction system. Auction systems do not meet the limitations of claim 19 because the price, by definition, is not specified in the auction. In an auction system, sellers do not list the price of the item, as set in forth Applicant’s claim 19. For example, claim 19 recites “receiving product information for said goods but is uploaded by distributors, who are not manufacturers of the goods, over a network to said computer business system which includes the name of the manufacturer of said goods, product identification information and a price specified by said distributors for said goods ... automatically generating entries in said computer business system that include said sales price ... making said listing of said goods available to said purchasers on said computer business system through a network connection to allow said purchasers to purchase said goods at such sales price over said network.” These limitations are not shown or suggested, in any manner, by FairMarket since the FairMarket system is an auction system.

FairMarket also fails to disclose other limitations set forth in claim 19. For example, Examiner argues that FairMarket discloses the name of the manufacturer of the goods. There is no disclosure in FairMarket of disclosing the name of the manufacturer, as asserted by the Examiner. In addition, there are other limitations of claim 19 that are

not disclosed in FairMarket. For example, FairMarket discloses a service charge. Claim 19 requires a markup of the price. Claim 19 recites “automatically marking up said price specified by said distributors in said computer system to a sales price.” In other words, a firm price is provided as set forth in claim 19, which is contrary to the basic operation of the auction system set forth in FairMarket. Hence, modification of FairMarket to provide set prices alters the fundamental operation of fair market which is an auction system. Claim 19 specifically requires the setting of a firm price, as set forth above. FairMarket specifically discloses that the service charge is a nominal flat fee. There is no disclosure or suggestion, whatsoever, in FairMarket of a markup price. FairMarket specifically espouses that the goods are sold at “a fair market price,” which is established by the bidders in the auction, rather than a price set by a broker. The statements made in FairMarket further distinguish the FairMarket auction system from the claimed invention in claim 19, in which the seller sets a firm price, and no service fee charge is charged to the seller.

It has been clearly established in the case law that a change in the mode of operation of a device which renders that device inoperative for its stated utility, as set forth in the cited reference, renders the reference improper for use to support an obviousness type rejection predicated on such a change. See, e.g, *Diamond International Corp. v. Walterhoefer*, 289 F. Supp. 550, 159 USPQ 452, 460-64 (D.Md. 1968); *Ex parte Weber*, 154 USPQ 491, 492 (Bd. App. 1967). In addition, any attempt to combine the teachings of one reference with that of another in such a manner as to render the invention of the first reference inoperative is not permissible. See, e.g., *Ex parte Hartmann*, 186 USPQ 366 (Bd. App. 1974); *Ex parte Sternau*, 155 USPQ 733 (Bd. App. 1967).

Doyle discloses a computer integration network for channeling internal orders for goods within an organization through a centralized computer to various internal and external suppliers. In other words, Doyle discloses a standard computerized ordering system that is used to order products within a large company. The electronic requisitioning system of Doyle et al. channels requisition orders to internal suppliers and outside vendors and processes invoices using a centralized computer system. In accordance with Doyle et al., the customer accesses an electronic item catalog and requisition form to place an order that is transmitted to a central computer system.

Requisitions are then segregated by the supplier and sent as separate purchase orders to the appropriate internal suppliers and outside vendors. The outside vendors ship the items directly to the customer. Invoices are centrally processed and the customer receives a combined invoice for all items that are sent back through the central computer system.

The Doyle system, as stated above, is a standard computerized ordering system for ordering products within a corporation. The Doyle system is substantially different from the electronic blind supply open commerce computer business system set forth in claim 19. Doyle does not disclose “providing a listing of said goods from said entries on said computer business system without revealing the name of distributors so that said distributors remain anonymous to purchasers at all times.” There is no teaching in Doyle, whatsoever, of maintaining the anonymity of the distributors.

The reason why Doyle does not teach this limitation is that the system disclosed by Doyle is a completely different system which is used for a different purpose than the system set forth in Applicant’s claimed invention, as set forth in claim 19. Again, Doyle is a standard computerized ordering system for ordering goods, which can come from either an internal source within in a corporation or outside vendors. The invention claimed in claim 19 is an electronic blind supply open commerce computer business system which allows distributors to sell goods without affecting a pricing structure established by distributors for those goods by maintaining the anonymity of the suppliers, as recited in claim 19. Doyle is not concerned with protecting the pricing structure and has not recognized this as a problem, because Doyle is not attempting to unload excess inventory or selling its inventory at a different price for other reasons.

As pointed out above, FairMarket discloses an online auction, while Doyle discloses standard computerized ordering system. The principles of operation of these systems are very different. Under the system of FairMarket, the highest bid price wins at the end of the day. Under the system of Doyle, the prices are made available to the buyer, but there is no reason to keep the identity of a distributor secret. To combine these references would require a major modification of the principles of operation of these systems and would render them inoperative.

A basic mandate inherent in Section 103 is that a piecemeal reconstruction of an Applicant’s invention using multiple references without any motivation to combine these

references shall not be a basis for a holding of obviousness. It is impermissible within the framework of Section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. In re Kamm, 172 USPQ 298, 301-02 (CCPA 1972).

Clearly, in this case, FairMarket and Doyle are directed to two different types of systems that operate in accordance with different principles. The FairMarket system is an auction system. The Doyle system is a standard computerized system. Clearly, picking and choosing the anonymity feature of the FairMarket system for use in the Doyle system would constitute a major change in the operation of the Doyle system. Conversely, FairMarket does not disclose a system in which a set price is provided to the buyer. Such a change would render the auction system of FairMarket inoperable. It would no longer be an auction. Again, changing the mode of operation of a reference which renders that reference inoperable for its stated purpose, is an improper modification of that reference to support a rejection based on obviousness. Hence, the modifications required to combine these references would render these references inoperable for their stated purposes since the modifications would require changes in the basic principles of operation of the references. For these reasons, the combination of FairMarket in Doyle is improper.

For these reasons, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Dated this 14th day of November 2005.

Respectfully submitted,

COCHRAN FREUND & YOUNG LLC

By: 

William W. Cochran
Registration No. 26,652
2026 Caribou Drive, Suite 201
Fort Collins, CO 80525
Phone: (970) 492-1100
Fax: (970) 492-1101
Customer No.: 27479